

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted May 30, 2013 employment incident.

FACTUAL HISTORY

On June 3, 2013 appellant, then a 62-year-old bearing worker, filed a traumatic injury claim (Form CA-1) alleging that on May 30, 2013 he injured his right shoulder when removing part trays from a rack with his right hand while in the performance of duty.

By decision dated August 11, 2016, OWCP denied appellant's claim. It found that appellant established that the May 30, 2013 incident occurred as alleged and that a medical condition was diagnosed. However, OWCP found that causal relationship had not been established between the accepted employment incident and the diagnosed right shoulder condition.

On August 25, 2016 counsel requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 19, 2017.

By decision dated June 6, 2017, OWCP's hearing representative affirmed the August 11, 2016 decision.

On September 29, 2017 appellant, through counsel, requested reconsideration.

By decision dated December 6, 2017, OWCP denied modification.

On January 18, 2018 appellant, through counsel, appealed to the Board. By decision dated January 21, 2020, the Board found that appellant had not established a right shoulder condition causally related to the accepted May 30, 2013 employment incident.³

On June 12, 2020 appellant, through counsel, requested reconsideration and submitted new evidence.

In a June 3, 2020 report, Dr. Sami Moufawad, Board-certified in physical medicine and rehabilitation, noted appellant's history of injury and treatment. He related that on May 30, 2013 appellant slipped at the shop and tried to support himself by holding a rail, using his upper right arm for support. Appellant was able to prevent the fall and initially did not report any symptoms, and went on with the workday. Thereafter, he organized his work space and lifted a stack of trays weighing approximately 1½ to 2 pounds each. When placing the trays on shelves at shoulder height, appellant felt a tearing sensation in the right shoulder and pain that was deep, achy, and stabbing, with no radiation, except for burning pain down to the middle of the right arm. Dr. Moufawad noted that appellant reported the incident to his supervisor and underwent a magnetic resonance imaging (MRI) scan of the right shoulder on June 4, 2013, which demonstrated a tear of the right rotator cuff. He related that appellant consulted with an orthopedic surgeon, had physical therapy and right shoulder surgery, and that the treatment helped with some

³ Docket No. 18-0529 (issued January 21, 2020).

of the pain and appellant's range of motion (ROM) improved "somewhat." Dr. Moufawad noted that appellant retired in July 2019. He examined appellant and found that appellant's current symptoms included pain in the right shoulder and difficulty lifting. Dr. Moufawad diagnosed a tear of the right rotator cuff and substantial aggravation. He explained the anatomy of the shoulder and function of the rotator cuff and advised that, with repeated use, the "tendons start having signs of fatigue and the tendons start developing small tears in the substance of the tendons. These changes usually are asymptomatic until a traumatic incident occurs. However, it is important to note that the trauma involved does not have to be of large magnitude. A simple trauma, such as reaching or lifting one or two pounds, is enough to produce a permanent aggravation of a torn rotator cuff." Dr. Moufawad noted that the June 4, 2013 MRI scan findings were chronic with retraction of the rotator cuff and mild muscle atrophy. He opined that the changes did not occur in a period of five days; however, the aggravation of the condition that brought the symptoms to light did occur at the time of injury on May 30, 2013, "while lifting the trays in front of him and placing them on the shelves at and above shoulder level. The weight of these trays put additional forces on the rotator cuff that led to the irreversible and permanent aggravation of the tear of the rotator cuff. This led to the decrease in the power and strength and limited range of motion of the right shoulder." Dr. Moufawad noted that appellant was asymptomatic and had full ROM of the right shoulder prior to the injury and opined that, if it were not for the May 30, 2013 incident, appellant would not have had the irreversible aggravation of the chronic tear of his rotator cuff. He further opined that the condition was not related to a natural progression, rather the incident on May 30, 2013 "induced this irreversible and permanent aggravation of the rotator cuff tear by lifting the trays in front of him and putting the undue mechanical toll on the torn rotator cuff. Therefore, based on the detailed description above, the chronic tear of rotator cuff was permanently and irreversibly aggravated by the injury on [May 30, 2013] when [appellant] was lifting the trays to place them on a shelf in front of him. Upon lifting the trays, the rotator cuff muscles were loaded beyond their capacity and the tear was permanently aggravated. Please note I am stating my opinion to a reasonable degree of medical certainty."

By decision dated September 1, 2020, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

⁴ *Supra* note 2.

⁵ *See T.J.*, Docket No. 19-0461 (issued August 11, 2020); *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's December 6, 2017 decision, which was considered by the Board in its January 21, 2020 decision.¹² Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹³

Subsequent to OWCP's December 6, 2017 decision, appellant submitted a June 3, 2020 report from Dr. Moufawad who diagnosed a tear of the right rotator cuff and substantial aggravation, opined that the conditions were work related, and explained how the injury occurred in appellant's case. He referred to the MRI scan performed on June 4, 2013, five days after the May 30, 2013 injury, and advised that the injury to appellant occurred "while lifting the trays in

⁶ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *F.H.*, Docket No. 18-0869 (issued January 29, 2020).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020).

¹⁰ *K.C.*, Docket No. 18-0529 (issued January 21, 2020).

¹¹ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

¹² Docket No. 18-0529 (issued January 21, 2020).

¹³ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

front of him and placing them on the shelves at and above shoulder level. The weight of these trays put additional forces on the rotator cuff that led to the irreversible and permanent aggravation of the tear of the rotator cuff. This led to the decrease in the power and strength and limited range of motion of the right shoulder.” Dr. Moufawad indicated that the sudden aggravation was not related to a natural progression, and that, upon lifting the trays, the rotator cuff muscles were loaded beyond their capacity, and the tear was permanently aggravated.

Dr. Moufawad is a Board-certified physician who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship. He reviewed appellant’s medical record and explained the mechanism of appellant’s injury. Although his opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require that OWCP further develop the medical evidence relating to the claim.¹⁴

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation and OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵

The case shall, therefore, be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. The referral physician shall provide a well-rationalized opinion as to whether appellant’s diagnosed conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that of Dr. Moufawad. After this and such other further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁴ See *A.K.*, Docket No. 20-1426 (issued March 8, 2021); *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁵ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: August 25, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board